

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:22-00164

SHAWN K. BEVER

MEMORANDUM OPINION AND ORDER

Pending before the court is the motion of defendant to continue the trial of this matter, currently scheduled for December 7, 2022. (ECF No. 36). In support of defendant's motion and the need for a continuance, counsel points to defendant's motion to dismiss the indictment which remains pending. Defendant requests a continuance of at least thirty days from disposition of the motion to dismiss. The motion to dismiss was filed on October 6, 2022, and a hearing on the motion was held on November 16, 2022. At the conclusion of the hearing, the court took the motion under advisement.

As counsel for defendant notes, disposition of his Bruen-based motion to dismiss will impact his preparation for this case and ultimately trial. Counsel for defendant notes that, if his Bruen motion to dismiss is denied, he will likely seek to file additional motions.

Because failure to grant the requested continuance would likely result in a miscarriage of justice, the court finds that the ends of justice outweigh the best interest of the defendant and the public in a speedy trial, see 18 U.S.C. § 3161(h)(7)(A),

and **GRANTS** the defendant's motion to continue. In deciding to grant the motion to continue, the court considered the factors outlined in 18 U.S.C. §3161(h) (7) (B) and found that failure to grant a continuance would deny counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Accordingly, the court hereby **ORDERS** as follows:

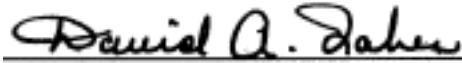
1. Trial of this action is continued until January 10, 2023, at 9:30 a.m., in Charleston.
2. Pursuant to 18 U.S.C. § 3161(h) (7) (A), the time from the filing of the motion until the trial is excludable for purposes of the Speedy Trial Act.*

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 28th day of November, 2022.

* The court also notes that, pursuant to 18 U.S.C. § 3161(h) (1) (D), the "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of [] such motion" is excludable for purposes of the Speedy Trial Act. According to the United States Court of Appeals for the Fourth Circuit, "the day a motion is filed through the day the district court holds a hearing on the motion is excluded. . . . If the court does not dispose of the motion during the hearing, the [Speedy Trial Act] permits the exclusion of an additional period—not to exceed 30 days—during which the court holds the motion under advisement and continuing through the day the order ruling on the motion is entered." United States v. Stoudenmire, 74 F.3d 60, 63 (4th Cir. 1996) (internal citations omitted).

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is positioned above a solid horizontal line.

David A. Faber

Senior United States District Judge